

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3405
Miscellaneous #03002, 03003

DATE: April 16, 2003

Note: This is a combined staff report for related items. This report contains a single background and analysis section for all items. However, there are separate conditions provided for each individual application.

SCHEDULED PLANNING COMMISSION MEETING:

DATE: April 30, 2003

PROPOSAL: Amend the Subdivision and Zoning Ordinances and the Stormwater Drainage Design Standards to revise the land size threshold at which approved erosion and sediment control plans are required from two to one acre, and to clarify provisions related to sediment in the public right-of-way.

CONCLUSION: This text change to modify the land size threshold at which approved erosion and sediment control plans are required from two to one acre is in Conformance with the Comprehensive Plan. This text change is required by the City's NPDES stormwater permit to meet federal requirements under the Clean Water Act. Review and approval of erosion and sediment control plans will continue to operate as it does presently through the Lower Platte South Natural Resources District.

<u>RECOMMENDATION:</u>

Approval

GENERAL INFORMATION:

CHANGE OF ZONE NO. 3405 to revise Section 27.81.010, "General Regulations," of the Lincoln Zoning Ordinance regarding the requirement to obtain approval of a drainage and grading plan prior to grading or disturbance of land by reducing the land size threshold at which an approved plan is required from two to one acres.

MISCELLANEOUS NO. 03002 to revise the Lincoln Land Subdivision Ordinance by amending Sections 26.11.038, "Authority to Proceed With Improvements," 26.23.190, "Land Grading," 26.27.060, "Land Preparation and Grading," 26.31.040, "Sediment in Public Right-of Way; Notice to Remove; Penalty," to revise the requirement to obtain approval of a drainage and grading plan prior to grading or disturbance of land by reducing the land size threshold at which an approved plan is required from two to one acres, and to clarify provisions related to sedimentation in the public right-of-way.

MISCELLANEOUS NO. 03003 to revise Chapter 2.05 of the City of Lincoln Design Standards, "Stormwater Drainage Design Standards," regarding the requirement to obtain

approval of a drainage and grading plan prior to grading or disturbance of land by reducing the land size threshold at which an approved plan is required from two to one acres.

HISTORY:

April 2003.

The proposed text revisions were presented to the Mayor's Neighborhood Roundtable on April 10, 2003. In addition, the Home Builders Association of Lincoln included an article written by the Public Works and Utilities Department in the HBAL monthly newsletter regarding erosion and sediment control and the upcoming text change to require erosion and sediment control plans for sites 1 acre or larger.

January-March 2003.

Erosion and sediment control education meetings were held with various representatives from the development and building community as well as the City and County departments and other agencies. These meetings included a March 26, 2003 meeting inviting the member of the Home Builders Association of Lincoln, and all meetings included an overview of the upcoming text change to require erosion and sediment control plans for sites one acre or larger.

February 2000.

The City Council Approved Change of Zone 3216, Misc 99011 and Misc 99012, revisions to the Zoning and Subdivision Ordinances and Stormwater Drainage Design Standards to adopt a range of stormwater quantity and quality standards, including provisions for erosion and sediment control. Among other provisions, the standards adopted in 2000 required the approval of an erosion and sediment control plan prior to grading or disturbance of any land greater than two acres in size. New provisions were also included for removal of sediment in the public right-of-way.

These and other new stormwater standards contributed to meeting the City's obligations under Phase I of the National Pollutant Discharge Elimination System program. Since 2000, the City has worked cooperatively with the Lower Platte South NRD and the State Nebraska Department of Environmental Quality to implement and enforce the erosion and sediment control program.

COMPREHENSIVE PLAN SPECIFICATIONS:

Watershed Management; Guiding Principles:

"Watershed planning will continue in order to be proactive and integrate stewardship principles for land conservation, stream and wetland buffers, better site design, Best Management Practices (BMP), and erosion and sediment control". (F-79)

"A comprehensive watershed management program will need to incorporate a range of strategies including land use planning, conservation efforts, appropriate standards for floodplains and stormwater, flood warning system development/expansion, stream stabilization, stormwater storage basins, and other structural flood control efforts". (F-78)

ANALYSIS:

1. The purpose of this text change is to revise the requirement to obtain approval of an erosion and sediment control plan prior to land disturbance by reducing the land size threshold at which an approved plan is required from two to one acres. The text change also clarifies provisions related to sediment in the public right-of-way by indicating that sediment arrives in the public right-of-way by more means than just stormwater drainage (i.e. tracking).
2. The City of Lincoln has requirements under both Phase I and Phase II of the National Pollutant Discharge Elimination System (NPDES) program. This program is authorized by the Clean Water Act and gives the Environmental Protection Agency the authority to set limits on a water quality basis and to require certain urban areas to have an NPDES permit prior to discharging stormwater into "waters of the state".
3. Revised stormwater standards adopted in February of 2000 contributed to meeting the City's Phase I NPDES permit requirements by adopting a standard requiring the approval of an erosion and sediment control plan prior to disturbance of land greater than two acres in size. The City works cooperatively with the Lower Platte South Natural Resources District (NRD) to implement and enforce this program, and erosion and sediment control plans are submitted to the NRD for review and approval.
4. Phase II NPDES requirements became effective in March of 2003. Lincoln's NPDES permit directs the City to update ordinances and design standards to require approval of erosion and sediment control plans for sites one acre or greater in size in accordance with Phase II regulations. The process for review and approval of plans will continue to operate as it does presently.
5. The text change is in conformance with the Guiding Principles of Watershed Management.

Prepared by:

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Planner

Applicant: Allan Abbott
Director of Public Works & Utilities Department

Contact: Nicole Fleck-Tooze
Public Works & Utilities Department

CHANGE OF ZONE NO. 3405

27.81.010 General Regulations.

The following general regulations shall apply to all zoning districts:

(a) Except as otherwise provided in this title, no building shall be erected, converted, enlarged, reconstructed, or structurally altered, nor shall any structure or land be used:

(1) Except for a purpose permitted in the district in which the structure or land is located;

(2) Except in conformance with the height and minimum lot requirements, and the parking and sign regulations, and any other applicable requirements of the district in which the structure or land is located.

(b) The minimum yards and other open spaces, including lot area per family, required by this title for each and every building at the time of passage of this title or for any building hereafter erected shall not be encroached upon or considered as yard or open space requirements for any other buildings, nor shall any lot area be reduced beyond the district requirements of this title.

(c) There shall be no grading or disturbance of any land one acre or greater ~~than two acres~~ in size, except for tilling, cultivation, or agriculturally related conservation practices without first submitting a drainage and grading plan to the Director of Public Works and Utilities setting forth the requirements of the design standards applicable to stormwater management, erosion, sedimentation control, and flood corridors, and obtaining approval of said plan; provided, however, that the requirement to preserve a minimum flood corridor will not apply to property within a subdivision approved prior to the effective date of this ordinance. The required grading and drainage plan may be waived by the Director of Public Works and Utilities upon submittal of a written request for such waiver stating that the grading or land disturbance is conducted as part of agricultural operations, that the land will remain in agricultural use for a period not less than three years, and that grading or land disturbance for any other purposes shall not be conducted prior to submitting and obtaining approval of a grading and drainage plan as required by this section.

(d) Every building hereafter erected or structurally altered shall be located on a lot as herein defined and in no case shall there be more than one main building on one lot except as otherwise provided in Chapters 27.65 and 27.71.

(e) All inhabited or occupied mobile homes shall conform to one of the following:

(1) Used as a dwelling and located in a mobile home court or mobile home subdivision operating under a valid special permit in conformance with Chapter 27.63;

(2) Used as a dwelling associated with a farm;

(3) Used as a temporary office or shelter incidental to construction or development on the premises on which the mobile home is located; or

(4) One mobile home may be used as an office in any mobile home court or mobile home subdivision operating under a valid special permit in conformance with Chapter 27.63; provided, the mobile home used as an office is located on an approved mobile home space or lot and such office is used only for conducting the business of the mobile home court or subdivision in which the office is located. Said mobile home may also be used as a dwelling.

(5) One mobile home may be used as an office in any campground operating under a valid special permit in conformance with Chapter 27.63; provided, the mobile home is used only for conducting the business of the campground. Said mobile home may also be used as a dwelling for the campground manager. A mobile home not in conformance with one of the above shall not be occupied or inhabited; nor shall it be connected to utilities, except when being

displayed for sale by a dealer or manufacturer.

(f) If a single building or lot is located in two or more zoning districts, each part of the building or lot shall comply with the regulations of the district in which it is located, except as provided in Chapter 27.05 or Chapter 27.75. (Ord. 17618 §28; February 22, 2000; prior Ord. 14469 §2; August 18, 1986: Ord. 14348 §1; March 31, 1986: Ord. 13535 §6; January 24, 1983: Ord. 12571 §420; May 8, 1979).

26.11.038 Authority to Proceed With Improvements.

After submittal of a proposed preliminary plat to the City Clerk, the City Clerk shall cause the proposed preliminary plat to be placed on the agenda of the City Council for approval by the City Council by resolution. Receipt by the subdivider of approval of the preliminary plat and acceptance by the City Council shall constitute authority for the subdivider to proceed with plans, profiles, and specifications for the grading and land preparation, presentation of the final plat to the Commission, and the installation of the required improvements, except street lighting and street name signs. No person shall engage in the grading or disturbance of any land one acre or greater than two acres in size without first submitting a drainage and grading plan setting forth the requirements of the design standards applicable to stormwater management, erosion, and sedimentation control and obtaining approval of said plan. Any person who engages in the grading or disturbance of any land in violation of the provisions contained in this section shall be subject to an order to cease and desist such grading work. No utility or improvement shall be installed or constructed until the area to be developed has been graded and the subdivider's licensed surveyor or engineer has submitted a written statement with the seal of the professional to the Director of Public Works and Utilities that the grading and shaping of the land to be developed has been completed in conformance with the grading shown on the preliminary plat, the drainage study, and the final street grades. The Director of Public Works and Utilities may approve the grading, installation, and construction in phases. Also, no utility or improvement shall be installed or constructed until the plans, and if appropriate profiles and specifications, are prepared by the appropriate city department or submitted by the subdivider to the appropriate city department and other governmental agencies required by law, and approval is granted. Plans, and if appropriate profiles and specifications, for street surfacing, sidewalks, public water systems, public wastewater works, storm drains, and drainage systems, land preparation and grading, and temporary turnarounds not prepared by the city engineering staff shall be submitted to the Department of Public Works and Utilities for approval. Plans, profiles, and specifications for community water systems and community wastewater works shall be reviewed and approved pursuant to Section 26.11.040(d) of this title. Individual water well systems and on-site wastewater treatment systems shall be submitted to the City-County Health Department for approval. Plans and specifications for landscape screens and trees shall be submitted to the Planning Director for approval. Plans and specifications for electrical distribution systems and street lighting shall be prepared by the Lincoln Electric System (LES) unless the subdivider requests and receives permission from LES to use a private consulting engineer, then the plans and specifications shall be submitted to LES for approval. The plans and specifications for street name signs shall be prepared by the Department of Public Works and Utilities. The plans and specifications for the grading and land preparation, paving, street surfacing, public water system, public wastewater works and storm drains shall be prepared by a professional engineer or architect registered in the State of Nebraska.

Installation of utilities and improvements may be allowed on all or a portion of the proposed subdivision prior to the approval of the final plat. Street surfacing, public water systems, public wastewater works, and public street lighting shall not be installed or constructed until authorized by executive order of the Mayor or ordered constructed by the city through an assessment district. Storm drainage systems shall not be installed or constructed until authorized by executive order of the Mayor.

The design and installation of each utility and other improvements shall be in strict

accordance with the design standards for that utility or other improvement. Design standards for utilities and other improvements shall be on file with and available from the City Clerk. (Ord. 17959 §7; January 28, 2002; prior Ord. 17617 §2; February 22, 2000: Ord. 17052 §1; August 26, 1996: Ord. 16950 §3; March 11, 1995: Ord. 16431 §1; July 26, 1993: Ord. 14565 §9; December 15, 1986: Ord. 13157 §19; June 29, 1981: Ord. 11370 §1; May 19, 1975).

26.23.190 Land Grading.

No person shall engage in the grading or disturbance of any land one acre or greater ~~than two acres~~ in size without first submitting a drainage and grading plan setting forth the requirements of the design standards applicable to stormwater management, erosion, and sedimentation control and obtaining approval of said plan. Any person who engages in the grading or disturbance of any land in violation of the provisions contained in this section shall be subject to an order to cease and desist such grading work. Earth moving shall be kept to a minimum to protect and preserve the existing trees and grasses and to keep erosion to a minimum. Graded and otherwise disturbed land shall be stabilized to prevent erosion. Trees that are to remain shall be protected to prevent damage to them during construction and development of the subdivision. (Ord. 17617 §7; February 22, 2000: prior Ord. 13157 §58; June 29, 1981).

26.27.060 Land Preparation and Grading.

Any cut, fill, and compaction of land within, and if applicable, adjacent to the subdivision, shall be accomplished in accordance with design standards of the city and subject to the approval of the Department of Public Works and Utilities. No person shall engage in the grading or disturbance of any land one acre or greater ~~than two acres~~ in size without first submitting a drainage and grading plan setting forth the requirements of the design standards applicable to stormwater management, erosion, and sedimentation control and obtaining approval of said plan. Any person who engages in the grading or disturbance of any land in violation of the provisions contained in this section shall be subject to an order to cease and desist such grading work. To control erosion and sedimentation during and after land preparation, the subdivider, his successors and assigns shall provide for disturbing only the areas needed for construction; removing only those trees, shrubs, and grasses that must be removed by construction; installing required sediment basins and diversion dikes before disturbing the land that drains into them; and temporarily stabilizing each segment of graded or otherwise disturbed land by seeding and mulching or by other approved methods. As land preparation is completed, the subdivider, his successors and assigns shall permanently stabilize each segment with perennial vegetation and structural measures. Diversion dikes and sediment basins shall be leveled after areas that drain into them are stabilized, and permanent vegetation shall be established on those areas. Sediment basins that are to be retained for storm water detention shall be seeded to permanent vegetation no later than nine months after completion of the sediment basins and shall be permanently maintained by the subdivider or his successors and assigns. The land shall be graded and shaped as per the approved grading plan. (Ord. 17617 §8; February 22, 2000: prior Ord. 16950 §13; March 11, 1996: Ord. 13157 §65; June 29, 1981: Ord. 11370 §1; May 19, 1975).

26.31.040 Sediment in Public Right-of-Way; Notice to Remove; Penalty.

In addition to the penalty provided in § 26.31.030, any person responsible for sediment deposited upon any street, alley, sidewalk, public way or public ground within the City as a result of tracking, runoff or other erosion and sedimentation from a building or development site shall remove the same within a reasonable period of time as shall be required by notice signed by the Director of Public Works and Utilities or his or her authorized representative and served upon such person responsible for sediment deposited personally or by certified mail. Whenever the person responsible for sediment deposited upon any street, alley, sidewalk, public way, or public ground within the City refuses or neglects to remove the same after receiving notice as provided herein, it shall be the duty of the Director of Public Works and Utilities or his or her designated representative to cause the same to be removed and the expense of the removal shall be recoverable from the person responsible in an action at law. (Ord. 17617 §9; February 22, 2000).

Chapter 2.05

STORMWATER DRAINAGE DESIGN STANDARDS

Section 3. POLICY

3.6 Erosion and Sediment Control from Construction Site Activities

An NPDES “notice of intent” and a Stormwater Pollution Prevention Plan (SWPPP) shall be required before land disturbance or vegetation removal activities occur on any site ~~greater than 2.0 acres~~ equal to or greater than one acre in size. Contractors and developers shall contact the City on the business day prior to performing land disturbance or vegetation removal on any site ~~greater than 2.0 acres~~ equal to or greater than one acre in size. Construction sites will be inspected periodically for compliance with submitted SWPPPs. The structural and non-structural best management practices (BMPs) are recommended to address stormwater quality enhancement.

Section 11. EROSION AND SEDIMENT CONTROL

11.1 Purpose and Scope

Require developers to submit and obtain approval of NPDES NOI and SWPPP before land disturbance or vegetation removal activities occur on any site ~~greater than 2.0 acres~~ equal to or greater than one acre in size. If the SWPPP has been prepared in accordance with the Manual and certified by a designated erosion control designer, the plan shall be automatically approved. If the plan is not prepared by a qualified erosion control designer, the plan shall be reviewed by the LPSNRD. If review comments are not received by permittee within 10 business days after receipt of application by the LPSNRD, the application shall be deemed approved. Require developers to submit start of construction notification (START) and end of construction (END) documents in accordance with City, State, and Federal requirements. As one condition of approval, require a construction schedule which indicates installation of as many of the BMPs as are feasible before any land disturbing activity is conducted, including site grubbing. The schedule shall also indicate a plan to limit exposure of disturbed land to the shortest reasonable period of time.

11.2 General Guidelines for Controlling Erosion

11.2.12 Stormwater Pollution Prevention Plan Requirements

Prior to any land disturbances or grading of any parcel ~~two (2) acres or larger~~ equal to or greater than one acre in size the landowner/land developer shall prepare on forms provided by the City, a “Notice of Intent” (NOI) and a Stormwater Pollution Prevention Plan (SWPPP), following the requirements for an NPDES Permit Number NER 100000, “Construction Site Storm Water General Permit,” and in conformance with City ordinances and design standards. An interlocal agreement between the City of Lincoln, the Lower Platte South NRD,

and the Nebraska Department of Environmental Quality is in process that will allow approval of one permit application to meet the respective regulatory requirements. See the flow chart shown on Figure 9-18 of the Manual.

STATE OF NEBRASKA



Mike Johanns
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

Michael J. Linder

Director

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Authorization to Discharge Under the National Pollutant Discharge Elimination System (NPDES)

This NPDES permit is issued in compliance with the provisions of the Federal Water Pollution Control Act (33 U.S.C. Secs. 1251 *et. seq.* as amended to date), the Nebraska Environmental Protection Act (Neb. Rev. Stat. Secs. 81-1501 *et. seq.* as amended to date), and the Rules and Regulations promulgated pursuant to these Acts. The municipal separate storm sewer system (MS4) identified in this permit is authorized to discharge storm water and other authorized flows, and is subject to the limitations, requirements, prohibitions and conditions set forth herein. This permit regulates and controls the release of pollutants in the discharges authorized herein. This permit does not relieve permittees of other duties and responsibilities under the Nebraska Environmental Protection Act, as amended, or established by regulations promulgated pursuant thereto.

NPDES Permit No.: **NE0133671**

IIS File No.: **PCS 73882 - P**

Permittee: **City of Lincoln**

Coverage: **All discharges from the Lincoln MS4 system that discharge to waters of the State, including any MS4 discharges that may reach waters of the State through intermediate drainageways or conduits**

Receiving Water: **Salt Creek and several tributaries**

Effective Date: **September 1, 2002**

Expiration Date: **August 31, 2007**

Pursuant to the Delegation Memorandum dated July 26, 1999 and signed by the Director, the undersigned hereby executes this document on the behalf of the Director.

Signed this 14th day of August, 2002


Jay D. Ringenberg
Deputy Director, Programs

Effective: September 1, 2002

Part III: Storm Water Management Program (SWMP)**A. Implementation of SWMP**

The permittee shall implement the Storm Water Management Program (SWMP) submitted to the Department on September 8, 2000 with the following additions set forth below in this subpart, and in accordance with the implementation schedule set forth in Table 1 below. The SWMP and the implementation schedule may be modified pursuant to the *SWMP Amendment Proposals and Approvals* procedures set forth below. The proposed Storm Water Management Program submitted September 8, 2000 by the City of Lincoln is included as an attachment to this permit for reference purposes.

1. Best Management Practices (BMP's)

The City shall review existing and additional storm water Best Management Practices (BMP's), and shall develop and implement an initial schedule for future BMP use. The purpose of the BMP's will be to reduce and/or minimize the discharge of pollutants in storm water. Monitoring to assess BMP effectiveness shall also be conducted (See Wet Weather Monitoring below).

BMP development, implementation and assessment shall consider all land-use settings that exist within the MS4 area, and any potential impacts to endangered/threatened species that may be identified by the NEDQ, the Nebraska Game and Parks Commission, or the US Fish and Wildlife Service. BMP Assessment shall also examine storm water impacts on any impaired water bodies as identified by the NDEQ pursuant to the requirements of § 303(d) of the Federal Clean Water Act (Note: Table FS-B in the Fact Sheet identifies the water bodies considered impaired at the time this permit was issued).

The initial BMP review and implementation schedule shall be completed within 12 months after the issuance of this permit. Follow-up BMP reviews shall be performed annually (See *Phase II Consistency* and *Annual SWMP Review* below), with a more extensive review to be conducted in the fourth year of permit coverage (See *Fourth Year BMP Review* below). The initial BMP implementation schedule and any subsequent amendments shall be incorporated into the SWMP in accordance with the amendment and approval procedures set forth below.

2. Industrial and High-Risk Runoff Areas

The City shall develop a program to identify high-risk runoff areas; and shall maintain a database of industrial facilities and high-risk runoff areas within the MS4. BMPs and/or other measures shall be implemented to address pollutant concerns from these facilities. "Other measures" may include pollution prevention and waste management programs, periodic inspections or reconnaissance visits; compliance and enforcement follow-up; or referral to the NDEQ for compliance or enforcement follow-up under the NPDES Industrial Storm Water Permit. A summary of inspection, compliance, monitoring and enforcement activities conducted at these sites shall be included in the annual report (See *Annual SWMP Review* below).

3. Construction Site Storm Water

The City shall continue to implement the current Construction Site Storm Water Program in conjunction with the Lower Platte South NRD; or an equivalent program to control erosion and sediment loss that is approved in accordance with the *SWMP Amendment Proposals and Approvals* procedures as set forth below. The City shall update the current Construction Site Storm Water Program to include sites down to 1 acre in size in compliance with time frame set forth in the Phase II Storm Water regulations.

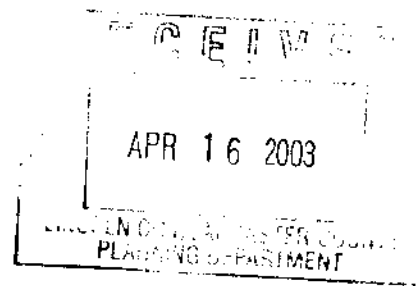
4. Phase II Consistency

The permittee shall initiate SWMP amendments that may be necessary to comply with the six minimum measures set forth in 40 CFR Part 122.34(b) (Reprinted in Appendix B of this permit). The target date for implementing any SWMP amendments that may be required shall be March 10, 2003. On or before January 1, 2003 (i.e., approximately 3 months prior to the implementation deadline), the permittee shall review the SWMP and submit any amendment proposals needed to meet the six minimum measures of the Phase II Storm water regulations set forth in 40 CFR Part 122.34(b). These SWMP amendments and any changes in the time schedules set forth above are subject to the *SWMP Amendment Proposals and Approvals* procedures set forth below.

LOWER PLATTE SOUTH
NATURAL RESOURCES DISTRICT



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Memorandum

Date: April 14, 2003
To: Ray Hill, Planning Dept.
From: J.B. Dixon, Stormwater Specialist, Lower Platte South Natural Resources District
Subject: Erosion & Sediment Control (CZ 3405, Misc 03002, Misc 03003)

We have reviewed the proposed ordinance changes referenced above. The National Pollutant Discharge Elimination System Phase II requirements stipulate that as a Phase I municipality, the City of Lincoln shall follow the guidelines set forth by the U.S. Environmental Protection Agency, and the Nebraska Department of Environmental Quality. With the proposed ordinance changes, the City of Lincoln is taking one of the necessary steps to be in compliance with these Federal regulations. We strongly approve of the proposed ordinance changes for erosion & sediment control on construction sites.

If you have any questions, feel free to call.

JBD/jbd

pc: file, Rock Krzycki